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ENVIRONMENT AND SUSTAINABLE DEVELOPMENT: SUSTAINABLE USE AND CONSERVATION OF THE MARINE LIVING RESOURCES OF THE HIGH SEAS

Unauthorized fishing in zones of national jurisdiction and its impact on the living marine resources of the world's oceans and seas

Report of the Secretary-General

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I. INTRODUCTION

1. The General Assembly, at its forty-ninth session, in its resolution 49/116 of 19 December 1994, took up for the first time the question of unauthorized fishing in zones of national jurisdiction and its impact on the living marine resources of the world's oceans and seas.

2. In that resolution, the General Assembly, recalling Agenda 21, 1/ adopted by the United Nations Conference on Environment and Development, in particular its chapter 17, concerning the sustainable development and conservation of the marine living resources of areas under national jurisdiction, as well as the Programme of Action for the Sustainable Development of Small Island Developing States, 2/ adopted by the Global Conference on the Sustainable Development of Small Island Developing States, in particular its chapter IV, concerning the sustainable development and conservation of the coastal and marine resources of areas under national jurisdiction, expressed deep concern at the detrimental impact of unauthorized fishing in zones under national jurisdiction and called upon States to take the responsibility, consistent with their obligations under international law as reflected in the United Nations Convention on the Law of the Sea, of taking measures to ensure that no fishing vessels entitled to fly their national flag fished in zones under the national jurisdiction of other States unless duly authorized by the competent authorities of the coastal State or States concerned, and stated that such authorized fishing operations be carried out in accordance with the conditions set out in the authorization.

3. The General Assembly also called upon development assistance organizations to make it a high priority to support efforts by the developing coastal States, in particular the least developed countries and the small island developing States, to improve the monitoring and control of fishing activities and the enforcement of fishing regulations. The Assembly further requested the Secretary-General to bring the resolution to the attention of all members of the international community, relevant intergovernmental organizations, the organizations and bodies of the United Nations system, regional and subregional fisheries bodies and relevant non-governmental organizations, and to submit to the General Assembly at its fiftieth session a report on the steps taken and on problems encountered in the implementation of the resolution, and thereafter as might be determined by the Assembly.

4. Accordingly, the Secretary-General sent a note verbale to all members of the international community, drawing their attention to resolution 49/116. Letters were also addressed to relevant intergovernmental organizations, the organizations and bodies of the United Nations system, regional and subregional fisheries bodies and relevant non-governmental organizations. The Secretary-General has received a number of responses and submissions from States, intergovernmental organizations, organizations and bodies of the United Nations system, regional and subregional fisheries organizations and non-governmental organizations. He wishes to express his appreciation for all the contributions, and in particular for the detailed report submitted by the Food and Agriculture Organization of the United Nations (FAO).

5. The present report, which takes into account such contributions, is submitted to the General Assembly in response to the request contained in resolution 49/116.

II. INFORMATION PROVIDED BY STATES

6. In its response to the Secretary-General dated 28 May 1995, the Federated States of Micronesia stated that it had no law concerning unauthorized fishing in zones of national jurisdiction of other States.

7. In its reply of 9 June 1995 to the Secretary-General, Guyana indicated that Guyanese vessels were cautioned against fishing illegally in waters of other States where it was difficult to prevent such fishing, e.g., in Suriname. In addition, Guyana had been negotiating for vessels to be permitted to fish in that country's waters. While regulations to ensure compliance had not been enacted by the Government, Guyana was anticipating the assistance of FAO to redraft and produce comprehensive fisheries regulations.

8. In its submission of 22 June 1995 to the Secretary-General, Qatar informed him that the granting of fishing licences was regulated by Law No. 4 (1984) and Executive Order No. 2 (1985) dealing with the exploitation and protection of the living marine resources of Qatar. Those licences were issued only to fishing vessels owned by nationals of the State of Qatar in order to allow them to operate fisheries within its territorial waters. Consequently, foreign fishing vessels were prohibited from fishing without first obtaining a licence from the Fishery Resources Department, which had not to date issued any such licences to foreign-owned vessels.

9. In its response of 25 June 1995 to the Secretary-General, Morocco stated that its legislation in force did not envisage penalties against the fishing vessels flying its flag which would fish in zones not under the jurisdiction of Morocco. However, the draft maritime code under consideration provides appropriate measures so that no such vessels would be able to operate in zones under national jurisdiction of other States or under the management regime of subregional or regional organizations unless duly authorized.

10. In its reply to the Secretary-General dated 29 June 1995, Venezuela transmitted the text of the Presidential Decree of 26 November 1992, which prohibited commercial fishing activities within the 3-nautical-mile coastal belt and in areas under a regime of special administration as well as in all coastal waters. Moreover, commercial fishing in waters under national sovereignty or under national jurisdiction without due permit or licence issued by the Ministry of Agriculture and Livestock or fishing activities in areas not covered by the authorization was also prohibited.

11. In its submission of 11 July 1995 to the Secretary-General, Mexico provided the following information:

> "The principal legal instruments governing fishing activity in Mexico are the Fisheries Act and its Regulations, which have been in force since July 1992. Both the Act and its Regulations set out measures intended to

prevent fishing vessels registered in Mexico and flying the Mexican flag from engaging in unauthorized fishing on the high seas or in waters under foreign jurisdiction. They also contain provisions aimed at ensuring that such vessels, wherever they fish, comply with measures established by coastal States for the management of living marine resources.

Article 2 of the Fisheries Act establishes that the foregoing applies also to vessels of Mexican registry and flying the Mexican flag that engage in fishing on the high seas or in waters under foreign jurisdiction by virtue of concessions, permits, authorizations or any other similar legal document issued by a foreign Government to Mexico or to its nationals.

Furthermore, article 15, subsection I, of this Act states that 'the Secretariat (Secretariat for the Environment, Natural Resources and Fisheries (SEMARNAP)) may, on a non-transferable basis, authorize only individuals or corporate entities of Mexican nationality having vessels registered in Mexico and flying the Mexican flag to engage in fishing on the high seas or in waters under the jurisdiction of another State'.

In order to obtain such authorization, pursuant to article 40 of the Fisheries Act, the following requirements must be met:

- SEMARNAP must be provided with information regarding the vessel and its fishing gear, technical and economic capacity and crew;

- International navigation and fishery regulations, especially those established by foreign Governments in waters under their jurisdiction, must be observed and strictly complied with; and

- Where Governments allow individuals to obtain commercial fishing licences or permits directly, the parties concerned shall, at the request of SEMARNAP, verify that the catches are taken under the authorization of such licences or permits.

The Fisheries Act and its Regulations also specify the penalties in cash and in kind to which Mexican vessels that violate these provisions are liable."

12. In its response of 13 July 1995 to the Secretary-General, Maldives stated that General Assembly resolution 49/116 on unauthorized fishing in zones of national jurisdiction and its impact on the living marine resources of the world's oceans and seas was extremely important for the Maldives owing to its geographical location and its dependence on fisheries and the marine environment. Maldives itself did not have any vessels fishing in zones of national jurisdiction of other States or on the high seas. In addition, it relied "very heavily" on fisheries and was concerned about poaching in its exclusive economic zone. In the past nine months 15 trawlers from four different countries had been apprehended while poaching in the Maldives exclusive economic zone. Such trawlers were dealt with under the Maldives Fisheries Law.

13. In its reply of 18 July 1995 to the Secretary-General, Oman submitted the following information regarding the measures taken by Omani authorities with respect to the issue of unauthorized fishing in areas under national jurisdiction:

"1. A Fisheries and Protection of Marine Resources Act was promulgated by Sultan's Decree No. 81/53, as amended, and an implementing regulation on the operation of the Act was issued under Ministerial Decision No. 94/4. The Act regulates fishing and provides for the protection and development of fisheries, and it defines offences and establishes penalties for those who violate its provisions. The Act stipulates in part:

(a) That the necessary licences must be obtained, namely:

(i) Licences to engage in fishing as a regular occupation;

(ii) A fishing-boat licence;

(iii) A licence to deal in marine living resources;

(iv) Licences for sports fishing;

(b) That the appropriate sanitary measure must be taken with a view to protecting and developing marine living resources, including:

(i) The immediate return to the sea of undersized fish;

(ii) A prohibition on the taking of sea turtles;

(iii) A prohibition on the taking of certain fish during their breeding season;

(iv) A ban on fishing with certain types of nets and certain equipment;

(v) A ban on the dumping of fish remains;

(vi) A ban on the dumping of waste from factories and of chemicals, oil and other substances harmful to marine living resources;

(c) That fishing must be regulated:

(i) So that mechanized fishing methods and dredgers may not be used without permission from the competent authorities;

(ii) So that the configuration of fishing boats and their accessory equipment may not be modified or altered without the agreement of the competent authorities.

"2. Monitoring for the purpose of protecting fishing resources is being stepped up by:

Increased activity by inspectors monitoring vessels under contract for fishing with national companies so as to ensure that, following coordination with the competent authorities, they adhere to sanitary methods in their fishing operations;

Constant monitoring by inspectors in order to require fishermen to use sanitary methods in fishing operations, in processing and handling fish and in exporting fish by land, sea and air in accordance with the law in force in Oman.

"3. Penalties are being increased and are enforced against those who violate the provisions of the Act.

"4. No foreign vessel is permitted to fish in the exclusive economic zone of Oman without obtaining a licence from the competent authorities and agreeing to abide by the provisions of the Act.

"5. Oman currently issues licences to fishing boats to operate within its exclusive economic zone, whether they are foreign vessels leased to Omani companies or Omani fishing boats operating in the commercial sector or the traditional sector."

14. In its submission to the Secretary-General dated 19 July 1995, Turkey indicated that vessels flying the Turkish flag were periodically warned by the relevant Turkish authorities not to fish in zones under the national jurisdiction of other States. In case of non-compliance with the warnings of the Turkish authorities, the fishing licence of the party responsible for the violation would be cancelled.

15. In its report to the Secretary-General dated 1 August 1995, China provided the following information:

"When China first began to engage in fishing on the high seas, the Chinese Ministry of Agriculture required Chinese fishing vessels to comply strictly with all applicable measures of international law and practice and refrain from entering the exclusive economic zone of any other State for the purpose of engaging in unauthorized fishing.

"On 9 November 1994 the Chinese Ministry of Agriculture issued ministerial order No. 4, which stipulated that fishing vessels operating in waters beyond China's national jurisdiction must comply strictly with international laws and practices, the relevant resolutions of the United Nations and fisheries agreements which China had concluded with other States, and that such vessels should not enter the exclusive economic zone of any other country to engage in unauthorized fishing. Violators of this order would, in accordance with Chinese domestic laws and regulations, be subject to such penalties as the issuing of a formal reprimand, imposition of a fine, confiscation of the catch and suspension or revocation of fishing permits."

16. In its reply of 10 August 1995 to the Secretary-General, Thailand made the following submission:

"...

"The Government of Thailand has taken several measures in relation to the above-mentioned resolution. These include the adoption of measures to control the number of fishing vessels operating beyond its national jurisdiction and of the fishing gears; the registration of new fishing vessels; and requiring permission to be sought in advance from the authorities concerned (Department of Fisheries). The relevant national legislation, the Fisheries Act of B.E. 2490 (1947), has also been amended with a view to imposing the responsibility on the vessel owners for their violation of other countries' national jurisdiction. The Government is now contemplating amending the Fisheries Act to impose the responsibility on the vessel masters. Negotiating with its neighbouring countries on the delimitation of the maritime boundaries and on resources management constitutes another measure in this regard.

"However, the Government of Thailand is of the opinion that in order to reach a just and lasting solution to this problem the letter and spirit of the 1982 United Nations Convention on the Law of the Sea, particularly article 62, must be observed and fully implemented without unreasonable requirements on the part of the coastal States."

17. In its submission to the Secretary-General dated 11 September 1995, Finland indicated that Finnish fishing vessels could practise fishing only in the area of the Baltic Sea. The fishing regulations of the Baltic Sea and the internal fishing arrangements of the European Union with their control systems would prevent unauthorized fishing as referred to in General Assembly resolution 49/116. There had therefore been no need for further measures to be taken in regard to the matter.

III. INFORMATION PROVIDED BY INTERNATIONAL ORGANIZATIONS

A. Intergovernmental organizations

18. In its response to the Secretary-General dated 3 July 1995, FAO submitted the following report:

"...

"Generalized concerns about unauthorized fishing

"FAO members do not report specifically to the organization about illegal fishing activity. However, in the course of meetings of FAO bodies and through other channels, concerns about, and reports of, illegal fishing activity are made known publicly by national authorities.

"At an Organisation for Economic Cooperation and Development (OECD) workshop on enforcement measures, held in Paris on 21 and

22 September 1993, the participant from Norway reported that in the Barents Sea, where the Russian Federation and Norway are the coastal States with a joint responsibility for the management of the most important species, there was strong evidence of cheating and overfishing by fishermen and there was a need to improve the systems of control and enforcement in that area.

"A technical consultation on sustainable fisheries development in the area of the FAO Western Central Atlantic Fishery Commission (WECAFC), held at Caraballada, Venezuela, from 18 to 22 October 1993, agreed that the conflict between industrial and artisanal fisheries continued to be a problem in the region, given the difficulties of coming up with equitable solutions. Positive changes were also reported, however, in countries such as Colombia and Venezuela, where progress had been made in the establishment of coastal areas for the exclusive use of artisanal fishermen and regulatory measures had been introduced to protect coastal fishery resources.

"At the FAO Indo-Pacific Fishery Commission (IPFC) 3/ Symposium held at Bangkok from 23 to 26 November 1993, it was reported that Thailand had lost access to about 777,000 square kilometres of fishing grounds as a direct result of the adoption of exclusive economic zones, resulting in a reduction in marine landings of some 200,000 metres each year. 4/ As a result, many Thai fishing vessels and fishermen were arrested every year for alleged intrusions into neighbouring waters. During the 1981-1992 period, 1,503 Thai fishing vessels were arrested by other countries (Malaysia 598, Viet Nam 444, Myanmar 303, India 61, Indonesia 55, Cambodia 36, and Bangladesh 6).

"In spite of the introduction by many countries of regulations to control trawling through bans on trawls in certain areas off the coast, it has been noted by many countries (and as Malaysia reported to the IPFC 1993 symposium in Bangkok) that zoning of trawler operations has failed to prevent conflicts between the trawlers and traditional fishermen. A major reason for this has been the failure of the trawlers to abide by the regulations - encroaching into forbidden waters when enforcement vessels are not present, and the fact that many vessels not licensed to trawl use trawling gear covertly.

"A number of delegations at the ninth session of the FAO Fishery Committee for the Eastern Central Atlantic (CECAF) Subcommittee on Management of Resources within the Limits of National Jurisdiction, held at Agadir, Morocco, from 5 to 9 December 1994, recognized the increasing importance of monitoring, control and surveillance (MCS) of foreign fishing operations in the fisheries management process. It was recognized that the navy and air force played key roles in certain countries in administering the patrol vessels and aircraft.

"The FAO Indian Ocean Fisheries Commission (IOFC) Committee for the Development and Management of the Fishery Resources of the Gulfs held its eighth session from 17 to 29 December 1994 at Muscat, Oman, and expressed concern at the prevalence of illegal fishing and the need to develop a

common approach to such activity. It was noted that shrimp trawlers of certain countries, in order to continue landing species for which a closed season was in force, sometimes landed at ports of nearby countries. The serious concerns of the Islamic Republic of Iran with regard to the need to protect the marine resources were fully endorsed.

"The FAO Indo-Pacific Tuna Development and Management Programme (IPTP) 5/ reports frequent incidents where foreign flag drift-netters and longliners are arrested in coastal States' waters, but a number of fishermen are understood to find it difficult to read charts and are unsure of their location. A number of drift-netters fish along the Arabian Sea coast as far down, possibly, as Somalia, and some have been arrested for unauthorized fishing by the Oman authorities.

"Because of the highly migratory nature of tuna and tuna-like species, the management measures adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT) 6/ do not discriminate between exclusive economic zones and high seas. ICCAT has had a continuous problem regarding non-contracting parties whose vessels carry out fishing activities that are not in compliance with the Commission's regulatory measures. This problem is mostly related to high seas fisheries, but such fishing activities also take place in the exclusive economic zones of some of the coastal States.

"The October 1994 Global Fisheries Enforcement Workshop, hosted by the Government of the United States of America, concluded, inter alia, that unauthorized fishing in the exclusive economic zones of coastal States was common in most areas of the world and that the incidence of such fishing was not declining. Renewed international attention was focusing on unauthorized fishing and the role of MCS systems, both within exclusive economic zones and on the high seas, as an essential element for the achievement of long-term sustainable fisheries conservation and management. 7/

"Unauthorized fishing in the exclusive economic zones of small island developing States

"Small island developing States face particular problems with respect to the monitoring of unauthorized fishing 8/ within their exclusive economic zones. This is because the exclusive economic zones of these States normally harbour pelagic and other resources of high commercial value, their exclusive economic zones are very large relative to their land areas and the States individually have limited resources to monitor fishing activities within their exclusive economic zones.

"Recognizing their individual vulnerability to unauthorized fishing and their individual lack of capacity to address the problem, regional groupings of small island developing States in the Caribbean (Organization of East Caribbean States (OECS) and the Caribbean Community (CARICOM)), the Indian Ocean (West Indian Ocean Tuna Organization (WIOTO)) and the South Pacific (South Pacific Forum Fisheries Agency (FFA)) are cooperating in a variety of ways to monitor, control and discourage unauthorized fishing

within their respective regions. Initiatives being pursued include regional MCS programmes, the establishment of regional registers of fishing vessels, the requirement for all catches to be transshipped in ports and the establishment of comprehensive observer programmes.

"Unauthorized fishing in the exclusive economic zones of small island developing States in the Caribbean region is problematic. It has been reported by OECS that unauthorized fishing in the exclusive economic zones of OECS member States is common. Recently, poachers have been targeting both pelagic and high-value inshore (reef and bank demersal) resources which are already fully or over-exploited. The OECS MCS programme is geared to reducing unauthorized fishing in the region. 9/

"Information concerning the incidence of unauthorized fishing in the exclusive economic zones of small island developing States in the Indian Ocean is not readily available. However, there are indications that a problem of unauthorized fishing of some considerable magnitude exists. This situation was confirmed by the representative of Maldives in November 1993 when he told a symposium convened under the auspices of IPFC that 'illegal foreign fishing in the outer reaches of the Maldives' exclusive economic zone by industrial fleets operating in the Indian Ocean is increasing, creating problems due to the country's limited enforcement capacity'. 10/

"South Pacific States have identified unauthorized fishing in their region by Asian distant-water fishing nation fleets as being a major obstacle to rational fisheries conservation and management (e.g., Kiribati and Papua New Guinea). 11/ Moreover, in December 1994, at the Multilateral High-level Conference on South Pacific Tuna Fisheries, it was pointed out that 'there is ample evidence that foreign fishermen have systematically contravened coastal State regulations for many years and that, because of the high cost of surveillance, it has been very easy for them to escape detection'. 12/ In response to this situation regional MCS cooperation in the South Pacific has reached an advanced level, and the Treaty on Cooperation in Fisheries Surveillance and Law Enforcement, commonly known as the Niue Treaty, signed in July 1992 by the FFA member States, gives effect to this cooperation.

"Efforts to improve the monitoring, control and surveillance of fishing activities and the enforcement of fishing regulations

"Since 1980 FAO has provided developing countries with dedicated policy, legal and technical advice, and training 13/ relating to fisheries MCS. 14/ In the mid-to-late 1970s two considerations figured significantly in FAO's assessment of the need for such technical assistance. These considerations were the (a) deliberations of the Third United Nations Conference on the Law of the Sea, and (b) recognition of the central importance of MCS to effective fisheries conservation and management.

"The Third United Nations Conference on the Law of the Sea (1973-1982) led to the adoption of a new international legal regime for the management

of the world's oceans, the 1982 United Nations Convention on the Law of the Sea (1982 Convention). 15/ Shortly after the commencement of the Conference, the international community agreed that in order to secure enhanced fisheries conservation and management, States would need to be given additional jurisdiction over fisheries resources adjacent to their coasts. This recognition had major implications for MCS policy and operations in that coastal States would be required, in future, to monitor and enforce fisheries conservation and management measures, no longer within a narrow territorial sea of 12 miles but rather over a much greater area in an exclusive economic zone extending up to 200 nautical miles from the coast.

"In 1979 the FAO Conference considered international fisheries developments and in particular the impact of the Law of the Sea Conference on national fisheries conservation and management, and in resolution 4/79, adopted by the Conference on 27 November 1979, invited 'the Director-General to continue and intensify efforts to mobilize the financial, technical and other forms of assistance required to implement the Programme of Assistance in the Development and Management of Fisheries in Exclusive Economic Zones'. 16/ It was that resolution that gave the impetus to establish a specific programme for the conservation and management of fisheries resources in exclusive economic zones, to be known as the FAO Exclusive Economic Zone Programme. 17/

"In addition to international developments related to the elaboration of the 1982 Convention, FAO continued to stress, in fisheries policy and technical advice provided to its developing members, that the implementation of conservation and management measures in exclusive economic zones would be unlikely to bring sustained long-term benefits in the absence of sound, reliable and cost-effective MCS systems. That was necessary to ensure that fisheries conservation and management measures adopted were observed and implemented.

"In concert with, and in support of, the provision of MCS technical assistance, FAO also provided developing countries with management and legal advice to: (a) bring national fisheries legislation in line with the provisions of the 1982 Convention; (b) harmonize legislation of regional groupings; (c) enhance national capacity in the legislative and fisheries law area; and (d) ensure that there was an unambiguous and appropriate legal base in support of the adoption and implementation of fisheries conservation and management arrangements.

"At its tenth session, held at in Mombasa, Kenya, from 7 to 11 November 1994, IOFC noted with appreciation the efforts by FAO to assist members of its Committee for the Management of Indian Ocean Tuna in the south-west Indian Ocean to strengthen their national capabilities in fisheries monitoring, control and surveillance. The Commission expressed its support for the proposal to organize once again a workshop on fishery *monitoring, control and surveillance in the south-west Indian Ocean*, which would be held in that region, in order to assist the members concerned with this important aspect of fisheries management.

"At the ninth session of the CECAF Subcommittee on Management of Resources within the Limits of National Jurisdiction, held at Agadir, Morocco, from 5 to 9 December 1994, several countries expressed interest in improving the performance of inspectors and observers involved in MCS and it was noted that the FAO project for improvement of the legal framework for fisheries cooperation, management and development of coastal States (GCP/RAF/302/EEC) would probably organize a seminar/workshop on the topic in response to this interest.

"At the twenty-first session of the FAO Committee on Fisheries (COFI), held in Rome from 10 to 13 March 1995, several members asked for support in efforts to improve MCS in view of its importance for fishery management.

"Technical assistance provided by FAO (undertaken between 1980 and 1995 in many regions of the world) falls essentially into two categories: (a) national reviews of current MCS situations and, based on the particular needs of and conditions in States, the elaboration of policy options for enhancing such systems; and (b) regional capacity-building and institutional strengthening programmes. For policy reasons regarding its maintenance of neutrality vis-à-vis all members, FAO has not been involved in providing operational MCS assistance, though operational-level training can be organized if appropriate funding is identified.

"Prominent among national requests for assistance have been the evaluation of existing MCS arrangements, advice concerning the adoption of appropriate MCS arrangements or means to strengthen existing arrangements, assessment of institutional arrangements and the evaluation of training needs. At the national level, requests for MCS assistance were often related to actual or perceived problems with the legal and illegal operation of foreign fishing fleets in the exclusive economic zones of the requesting States. 18/

"A majority of the regional MCS technical assistance provided by FAO has been delivered through the organization's regional fishery bodies or programmes. This assistance, both of a policy development and systems nature, has been delivered primarily in workshop mode where important common MCS issues have been addressed and evaluated. 19/

"FAO regards the provision of MCS technical assistance to national fisheries administrations and/or regional fisheries organizations as an essential component of capacity-building and institutional strengthening so that in the longer run developing States will be better placed to conserve and manage their fisheries resources more effectively. However, capacity-building is a slow process, often requiring many years of consistent and costly application before policies and programmes are established firmly and the benefits of assistance provided become apparent. 20/

"It is being increasingly realized that the best prospects for strengthening the MCS capacity of developing States lies in regional cooperation. Indeed, given the scarcity of resources with which to support national MCS programmes and the variable results achieved from these programmes, developing States with common fisheries and fishing interests

have demonstrated that significant progress towards enhancing fisheries conservation and management can be made through regional MCS initiatives. Developing States are therefore being urged to assess and address MCS both in terms of national programmes and through regional, cooperative networks.

"Conclusion

"Requests for MCS technical assistance by FAO's developing members are expected to remain high as a consequence of a number of factors, including:

(a) Continued over-exploitation of the resources in many countries, which will indirectly encourage some States' fleets to fish in waters of neighbouring countries;

(b) Increased realization by States that MCS is an integral and essential component of fisheries conservation and management and that prospects for achieving conservation and management objectives and sustainable development will be limited in the absence of effective MCS;

(c) Recognition that fisheries falling under national jurisdiction will become subject to greater international scrutiny with respect to the nature and effectiveness of conservation and management measures adopted and implemented. In this connection the international community will expect States to take concrete steps towards implementing the goals and objectives of sustainable development as set out in the Rio Declaration on Environment and Development and Agenda 21;

(d) Acknowledgement that fishing in areas under national jurisdiction and on the high seas carries with it substantial flag State responsibilities that must be fulfilled through States having greater control over the operation of their fleets. To this end States may need to adopt measures associated with the implementation of the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, concluded in 1993 under FAO auspices, and the outcomes of international negotiations, and in particular those parts relating to MCS, for the FAO Code of Conduct for Responsible Fisheries and the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks."

19. In its response of 23 May to the Secretary-General, the Council of Europe indicated that as the provisions of General Assembly resolution 49/116 concerned the sustainable use and conservation of marine living resources, they would be particularly taken into account in the activities contributing to the implementation of the Bern Convention of 19 September 1979 on the Conservation of European Wildlife and Natural Habitats.

20. In its reply of 3 July 1995 to the Secretary-General, the Banco Centroamericano de Intergración Económica reported that it had no further information to add with regard to the implementation of General Assembly resolution 49/116.

B. Regional and subregional fisheries organizations and arrangements

21. In its reply to the Secretary-General dated 26 May 1995, the Latin America Organization for the Development of Fisheries (OLDEPESCA) stressed that owing to the adverse impact of unauthorized fishing in zones under national jurisdiction, it was imperative for States, in the exercise of their sovereign rights and in accordance with international law, to adopt measures which ensured that no fishing vessels flying their flags would be able to fish in zones under the jurisdiction of other States unless duly authorized by the competent authorities of those States. Such authorized fishing operations should be carried out in accordance with the conditions set out in the authorization. OLDEPESCA also supported the relevant provisions of resolution 49/116 requesting development assistance organizations to make it a high priority to grant financial and technical assistance to the least developed countries with a view to improving the monitoring and control of fishing activities and the enforcement of fishing regulations. Such a recommendation should be encouraged in view of the fact that the majority of the world's catch was harvested in zones under the national jurisdiction of developing coastal States, thereby affecting their economies and the benefit they could derive from their resources, including their food security.

22. In its response of 26 June 1995 to the Secretary-General, the Northwest Atlantic Fisheries Organization (NAFO) submitted the following information:

> "...
>
> "The Northwest Atlantic Fisheries Organization has established and maintains the Scheme of Joint International Inspection and Surveillance in the NAFO Regulatory Area. The Scheme incorporates national and international elements of inspection in the north-west Atlantic Ocean. The contracting parties of NAFO have been always cooperating closely with the coastal States of the convention area to ensure the objectives of the NAFO Convention which could be consonant to some extent with the objectives of resolution 49/116.
>
> "..."

23. In its reply to the Secretary-General dated 28 June 1995, the International Commission for the Conservation of Atlantic Tunas (ICCAT) made the following submission:

> "...
>
> "Because of the highly migratory nature of tuna and tuna-like species, the management measures adopted by the Commission do not include any discriminatory provisions as regards exclusive economic zones or high seas. In November 1993, ICCAT adopted a Declaration requesting the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, inter alia, to consider urgently the necessity of managing the stocks of highly migratory species throughout their entire migratory range. ICCAT has had a continuous problem regarding non-contracting parties whose

vessels carry out fishing activities that are not in compliance with the Commission's regulatory measures. This problem is mostly related to high seas fisheries, but such fishing activities also take place in the exclusive economic zones of some of the coastal States. Again, the statistics available and the reports of such fishing activities do not distinguish between exclusive economic zones and high seas. Hence, it would be difficult to separate such issues between these two zones.

"In order to reduce such fishing activities by non-contracting parties, which undermine the effectiveness of ICCAT regulatory measures, the Commission has taken various actions, such as diplomatic démarches, frequent requests to such non-contracting parties to implement the ICCAT regulatory measures, etc. The Commission has also adopted a Bluefin Tuna Statistical Document Programme, whereby all the bluefin tuna imported into an ICCAT contracting party must be accompanied by a statistical document. ICCAT has also adopted various resolutions, including on the possibility of taking trade measures, sighting reports, and friendly visits to the non-contracting parties' vessels fishing in the ICCAT convention area, and vessel tracking.

"As indicated above, most of these measures are applicable, regardless of the exclusive economic zone or the high seas nature of the fishery.

"..."

24. The Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), in a communication addressed to the Secretary-General dated 29 June 1995, indicated that other than fully supporting the aims and principles of the resolution, it had no additional comments to make.

25. In a note to the Secretary-General dated 20 June 1995, the North Atlantic Salmon Conservation Organization (NASCO) informed the Secretary-General that NASCO was not aware of any activities within the convention area which would be inconsistent with General Assembly resolution 49/116.

26. In its submission of 24 June 1995 to the Secretary-General, the Asia Pacific Fisheries Commission (APFIC) reported that, according to the information it had received from its member States:

(a) Malaysia did not have any distant-water fishing fleet that could probably violate resolution 49/116. However, Malaysia faced problems of encroachment by fishing vessels from neighbouring countries. In spite of the high fines and mandatory confiscation of fishing vessels and fishing gear imposed upon conviction under the Malaysian Fisheries Act 1985, the number of foreign fishing vessels arrested in Malaysian fisheries waters had increased. Unauthorized foreign fishing had created various problems, especially in the management of the fisheries resources in areas under national jurisdiction. Management strategies implemented might not meet the objective of sustainable development of fisheries resources if those foreign fishing vessels would keep on encroaching into Malaysian waters and would keep on poaching its fisheries resources. One of the actions taken by Malaysia to overcome the problem of foreign fishing in areas under its national jurisdiction was the introduction of

the monitoring, control and surveillance programme in fisheries management. The programme would provide effective methods towards getting required data from the collection of biological data to stock evolution, design of control, monitoring of the performance of the fisheries resources and taking the necessary enforcement actions to ensure that only authorized fishing vessels conducted fishing activities within designated areas in the Malaysian exclusive economic zone;

(b) Pakistan had no high seas fishing fleet of its own. Some trawlers and longliners were operating in Pakistan's exclusive economic zone under licensing arrangements and therefore there arose no question of poaching in the exclusive economic zone of other States by Pakistani flag vessels;

(c) Sri Lanka had noticed during the last few years an increasing number of incidents where Sri Lankan fishing boats had drifted into the exclusive economic zones of neighbouring countries, especially to India and Maldives, owing to a lack of knowledge of boundaries. There also had been cases where during innocent passage Sri Lankan fishing boats had been apprehended and legal action instituted by India and Maldives. One of the methods of resolving these problems was to have bilateral talks with the neighbouring countries, such as Maldives. This had been already initiated with Maldives and was intended to obtain fishing permits for Sri Lankan fishermen to fish in the exclusive economic zone of that country. In addition, it was reported that a large number of Indian fishing boats had crossed over into the Sri Lankan exclusive economic zone in the Palk Bay area to catch shrimp. Therefore, one of the major constraints was the lack of facilities for monitoring and surveillance. Assistance from developed countries was requested to strengthen monitoring and surveillance capability;

(d) Hong Kong drew attention to a number of practical difficulties in following up reports concerning unauthorized fishing or fishing in an unapproved manner in foreign waters by boats based in Hong Kong, despite its willingness to cooperate with the authorities concerned. As most of the fishing done by the fleet based in Hong Kong was in waters beyond Hong Kong jurisdiction, the authorities would consider it more appropriate for the countries concerned to take appropriate action to control fishing in their own waters, in view of the fact that it would be difficult to control the activities of boats based in Hong Kong once they had left local waters.

27. In its report to the Secretary-General dated 4 July 1995, the North-East Atlantic Fisheries Commission (NEAFC) indicated that General Assembly resolution 49/116 was of less concern to NEAFC as a body, since its major focus appeared to be on the duties of flag States in respect of vessels fishing in zones under national jurisdiction of other States. NEAFC was not a flag State, nor did its jurisdiction extend to areas under contracting parties' national jurisdiction without the agreement of the contracting party concerned. However, Norway, as a contracting party, had informed NEAFC that Norway's responsibility as a flag State was taken care of by bilateral agreements with other coastal States. Any unauthorized fishing in zones of national jurisdiction was prevented by implementation of a licence system. Under such a system, when Norwegian vessels planned to fish in the European Union's zones, an application to issue a licence would be sent by the Norwegian authorities to the European Union and the

response accordingly received would be dispatched to the vessel concerned. In this way Norwegian authorities sought to make sure that only duly authorized fishing was conducted in other States' national zones by Norwegian vessels.

C. Organizations and bodies of the United Nations

28. In its response of 25 April 1995 to the Secretary-General, the Economic Commission for Europe (ECE) indicated that it was involved in the issues addressed by General Assembly resolution 49/116. However, it had brought the resolution to the attention of its regional advisers to be taken into account when advising ECE member States on integrated coastal management or similar issues relevant for ECE island States.

29. In its reply of 12 May 1995 to the Secretary-General, the Economic and Social Commission for Asia and the Pacific (ESCAP) stated that it was not involved in any activities related to living marine resources and therefore had no submission to make with regard to General Assembly resolution 49/116.

30. In its submission to the Secretary-General dated 31 May 1995, the United Nations Conference on Trade and Development (UNCTAD) indicated that the subject of General Assembly resolution 49/116 was outside its mandate and did not therefore call for any comments.

31. In its report of 5 June 1995 to the Secretary-General, the United Nations Development Programme (UNDP) provided the following information:

> "... UNDP, through its support of developing countries, is both directly and indirectly involved in controlling unauthorized fishing.
>
> "Clearly the TRAIN-SEA-COAST programme, which is run together with the Division [for Ocean Affairs and the Law of the Sea, Office of Legal Affairs], will be training a cadre of developing-country personnel capable of increased efficiency in their monitoring, control and surveillance activities.
>
> "UNDP is a steering committee member of a biannual fisheries development donor consultation. At the last consultation, which took place in Paris in April 1994, some of the donors were considering making the existence of a fisheries management regime, including monitoring, control and surveillance, a prerequisite for assistance to the fisheries of any given country.
>
> "In May 1994, UNDP chaired a workshop on donor collaboration at the Global Conference on the Sustainable Development of Small Island Developing States in Barbados. UNDP's Sustainable Development Network is working on a sub-network called SIDSNET, and UNDP's Technical Cooperation among Developing Countries (TCDC) Unit is working on a Small Island Developing States (SIDS) technical assistance programme.
>
> "Perhaps our most direct involvement will be a project which we are currently considering with FAO. The FAO Council has developed a code of

conduct for responsible fisheries, which is about to be approved by the FAO Council and Assembly. UNDP is working with FAO on a possible technical assistance proposal to help countries implement the code of conduct, which by definition calls for many of the same actions as are covered by General Assembly resolution 49/116."

32. In its response to the Secretary-General dated 23 June 1995, the United Nations Economic Commission for Latin America and the Caribbean (ECLAC) stated that it did not have any specific information to submit for the reporting period.

IV. INFORMATION PROVIDED BY NON-GOVERNMENTAL ORGANIZATIONS

33. In its submission of 30 June 1995 to the Secretary-General, the Hellenic Marine Environment Protection Association (HELMEPA) indicated that the issue of unauthorized fishing in zones of national jurisdiction, with its impact on the living marine resources of the planet, was of concern to HELMEPA. However, the Association's membership, consisting of 538 ocean-going Greek vessels, did not include fishing vessels or fishermen. Therefore, HELMEPA neither was in a position to collect and provide information on the problems encountered in the implementation of General Assembly resolution 49/116 nor had the opportunity to support its objectives in the appropriate forums.

Notes

1/ Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992 (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: Resolutions Adopted by the Conference, resolution 1, annex II.

2/ Report of the Global Conference on the Sustainable Development of Small Island Developing States, Bridgetown, 25 April-6 May 1994 (United Nations publication, Sales No. E.94.I.18 and corrigenda), chap. I, resolution 1, annex II.

3/ Now called the Asia-Pacific Fishery Commission.

4/ B. Phasuk, "Fishing effort regulations in the coastal fisheries of Thailand", in Socio-economic issues in coastal fisheries management: Proceedings of the IPFC Symposium held in conjunction with the twenty-fourth session of the Indo-Pacific Fishery Commission, Bangkok, Thailand, 23-26 November 1993 (FAO, Bangkok, RAPA publication 1994/8) pp. 111-122.

5/ E-mail communication dated 17 May 1995.

6/ Fax communication dated 5 June 1995.

7/ As discussed in "The state of world fisheries and aquaculture" (FAO, Rome, 1995), prepared for and discussed at the FAO Twenty-First Session of the Committee on Fisheries (COFI), held in Rome from 10 to 15 March 1995, as well as the FAO Ministerial Meeting on Fisheries, held in Rome from 14 to 15 March 1995.

8/ Unauthorized fishing is only one aspect of the problem faced by small island developing States with respect to the operation of some distant-water fishing nation fleets within their exclusive economic zones. Equally problematic and significant from a fisheries conservation and management point of view is the widespread non-reporting and under-reporting of fish catches.

9/ D. V. Robin and P. A. Murray, "Profile of fisheries enforcement in the Organization of Eastern Caribbean States subregion". Paper presented at the Global Fisheries Enforcement Workshop, Washington, D.C., 25-27 October 1994.

10/ FAO, Indo-Pacific Fishery Commission: Socio-economic issues in coastal fisheries management (FAO, Bangkok, RAPA publication 1994/8), p. 5.

11/ See papers presented by the representatives of Kiribati and Papua New Guinea at the Global Fisheries Enforcement Workshop, Washington, D.C., 25-27 October 1994.

12/ South Pacific Forum Fisheries Agency, Record of the proceedings of the multilateral High-level Conference on South Pacific Tuna Fisheries (FFA, Honiara, 1995), p. 9.

13/ For a summary of this technical assistance, see David J. Doulman, "Technical assistance in fisheries monitoring, control and surveillance. A historical perspective of FAO's role", FAO Fisheries Circular No. 882 (FAO, Rome, 1994). This section of the FAO report draws substantially on information contained in that circular.

14/ For a recent review of MCS systems and procedures, see P. Flewwelling, "An introduction to monitoring, control and surveillance systems for captures fisheries", FAO Fisheries Technical Paper No. 338 (FAO, Rome, 1995).

15/ Official Records of the Third United Nations Conference on the Law of the Sea, vol. XVII (United Nations publication, Sales No. E.84.V.3), document A/CONF.62/122. The Convention entered into force on 16 November 1994.

16/ FAO, Report of the Conference of FAO, (twentieth session, Rome, 10-28 November 1979 (FAO, Rome, 1979), pp. 28-32.

17/ The objectives of the programme were: (a) to strengthen the capabilities of coastal countries and groupings of countries to manage and develop their fisheries; (b) to promote the rational management and the full use by developing countries of fishery resources in their exclusive economic zones; and (c) to strengthen the efforts of developing countries to secure a greater share of, and higher benefits from, living marine resources as part of initiatives to establish a new international economic order.

18/ While the operation of foreign fleets in the exclusive economic zones is of significance because of sovereignty considerations, States need to be encouraged to recognize that fishing activities by national and joint-venture fleets must also be subject to effective MCS if fisheries conservation and management objectives are to be achieved and sustainable resource utilization assured. Indeed, it is often these fleets that present the most severe threats to fisheries conservation and management because they tend to operate closer inshore where resources in the exclusive economic zones are subject to the most intense fishing effort and are less likely to be penalized in the event of violation.

19/ There has in fact been little emphasis on operation-level training because such training tends to be somewhat sensitive and longer-term. However, such training has been undertaken as part of FAO's regional initiatives in the region of the Association of South-East Asian Nations (ASEAN).

20/ The challenges associated with strengthening MCS capacity in developing States are part of the broader requirement associated with strengthening fisheries administration generally. Until such administration is improved the capacity of developing States to "absorb" MCS technical assistance will be constrained.